

## STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. R-07/09-362  
 )  
 Appeal of )

# INTRODUCTION

Pursuant to 33 V.S.A. § 6906(d), the petitioner appeals the decision by Department of Disabilities, Aging and Independent Living (DAIL) substantiating a report of exploitation by the petitioner under 33 V.S.A. § 6902(6) allegedly perpetrated against an elderly and disabled woman for whom the petitioner provided care in 2007 and 2008.

The Department's Review decision in this matter was dated June 8, 2009. The petitioner filed her appeal to the Board on July 7, 2009. A telephone status conference was held on August 11, 2009.

At the telephone status conference it did not appear that the essential facts were in dispute. The petitioner agreed that the Department would file a Motion for Summary Judgment and that another status conference would be held to determine whether the petitioner would contest any of the facts alleged by the Department.

That status conference was scheduled for 10:30 on October 13, 2009. The petitioner did not answer her phone at

that time. At noon that day, the petitioner called the hearing officer, and she agreed to file a response in writing to the Department's motion by October 30, 2009. The petitioner filed her response with the Department on October 27, 2009.<sup>1</sup>

DISCUSSION

In its Motion for Summary Judgment (which refers to the petitioner as "Respondent") the Department alleges the following facts (the petitioner's responses follow in parentheses):

1. E.S., d.o.b. 1/28/1932 is a 77-year old woman who resides in senior housing in Rutland.

(In her response, the petitioner alleges that E.S.'s residence was "not necessarily senior housing".)

2. E.S. suffers from physical and emotional conditions that render her essentially homebound. These conditions include Chronic Obstructive Pulmonary disease ("COPD") and anxiety.

(The petitioner alleges that she was not "aware of her medical conditions", but she does not dispute that E.S. was essentially homebound.)

3. E.S. hired the Respondent in 2007 for an hour a week to help her with housework.

(The petitioner [respondent] indicates she agrees.)

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<sup>1</sup> For some reason, the Department did not forward this response to the

4. E.S. had been receiving Visiting Nurse services prior to the time she hired Respondent in 2007.

(The petitioner alleges she was unaware of this.)

5. Soon after hiring respondent, E.S. began requesting that Respondent do additional tasks for her, beyond the originally contemplated one hour a week. These services were paid for by E.S. and not performed on a volunteer basis by the Respondent.

(Petitioner agrees).

6. E.S. eventually gave Respondent permission to use her (E.S.'s) car in order to transport E.S. to places in the community and for errands around Rutland.

(Petitioner agrees.)

7. During some or all of the period that Respondent was using the car and driving E.S., she did not have a valid driver's license.

(Petitioner disagrees, but only because she can't document otherwise, and she questions the relevance.)

8. E.S. allowed Respondent to bring the car home with her (to the Respondent's residence).
9. E.S. did not at any time give or sell the car to the Respondent.
10. The car remained E.S.'s property at all relevant times.
11. During January 2008, while the car was in the custody and control of the Respondent, it was found abandoned in a ditch in Shoreham, Vermont.
12. The car had to be towed back to Rutland (\$155 towing charge).

13. This charge was made known to Respondent shortly after it was levied.

14. Respondent, though aware of the damage to the car and of this bill for towing, never recompensed E.S.

The petitioner does not directly dispute any of the allegations in paragraphs 8-14, above. She maintains, however, that she was not driving the car the night it was found abandoned, and that it was used by another individual that night without her knowledge and permission. Therefore, she argues, she cannot be held responsible for any towing charges that were incurred when it was abandoned in another location.

The petitioner does not allege that E.S. had ever given her permission to allow anyone else to drive the car. It is also undisputed that the petitioner knew the individual that took the car that night well (she has referred to him throughout as her "boyfriend"). There is no indication she ever filed a police report or took any other legal action against the individual who took the car. And she admits that to this day neither she nor anyone else to her knowledge has ever reimbursed E.S. for the towing expense.

ORDER

The Department's decision is affirmed.

REASONS

The petitioner does not directly dispute that E.S. meets the definition of a "vulnerable adult", which includes an individual who is "impaired due to. . . infirmities of aging. . . ." See 33 V.S.A. § 6902(14). Under 33 V.S.A. §§ 6902(6)(A)&(B), "exploitation" includes "willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another" or "acquiring possession or control of an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress or fraud".

Based on the uncontested facts alleged by the Department it must be concluded that by accepting the use of E.S.'s car and by refusing to take any financial responsibility for its misuse the petitioner willfully "used" E.S.'s property without authority and for "wrongful advantage" to E.S.'s financial detriment within the meaning of the above provision. It must also be concluded that by not informing E.S. that she did not have a valid drivers license, the petitioner acquired the use and control of E.S.'s car by "undue influence" or "fraud". Thus, the Department's

decision substantiating the incident as exploitation of E.S. by the petitioner must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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